

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**JOSE REYES,**

**Plaintiff,**

**-against-**

**EL JOBITO SEAFOOD RESTAURANT INC> D/B/A  
EL JOBITO RESTAURANT AND JUAN ARIAS,  
INDIVIDUALLY,**

**Defendants.**  
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**20-cv-8816 (ALC) (KHP)**

**ORDER DENYING  
DEFAULT JUDGMENT**

**ANDREW L. CARTER, JR., District Judge:**

Plaintiff filed this action on October 22, 2020. Plaintiff served Defendants on October 28 and 29. Defendant Arias claims that he does not speak much English; therefore, he didn't understand the documents. Arias claims he is unfamiliar with the legal system and lacked funds to represent himself. Once he realized that the documents related to the plaintiff, he reached out to the plaintiff to discuss settlement. In April 2021, Arias was served with an Order To Show Cause as to why default judgment should not be entered against him. Following this, he hired an attorney.

There are three factors for determining whether an entry of default judgment is warranted: "1) whether the defendant's default was willful, 2) whether the defendant has a meritorious defense to the plaintiff's claims, and 3) the level of prejudice the non-defaulting party would suffer as a result of the denial of the motion for default judgment." *U.S. v. DiPaolo*, 466 F. Supp 2d 476, 482 (S.D.N.Y. 2006) (internal citations omitted).

The defendants' default was careless and negligent, but not willful. The defendant has set forth a meritorious defense to the plaintiff's claims. There is prejudice to the plaintiff from the delay, but level of prejudice is not high enough to justify imposition of a default judgment.

The plaintiff's motion for default judgment is denied. I also deny the request for a bond. By separate order, this case will be referred to the magistrate judge for general pretrial supervision.

**SO ORDERED.**

**Dated: October 19 2021**  
**New York, New York**

/s/ Andrew L. Carter, Jr.  
**ANDREW L. CARTER, JR.**  
**United States District Judge**